

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:RFP:CHI:2:POSTF-133293-02
MJCalabrese

date: July 22, 2002

to: John Fisher, Revenue Agent
LMSB:1725:JLFisher

from: Associate Area Counsel (LMSB), Chicago

subject: Opinion - Consent to Extend the Assessment Limitations Period

Taxpayer: [REDACTED], Inc.

This memorandum responds to your request for assistance. It does not appear that there is an issue in this case that requires coordination with an industry counsel. This memorandum should not be cited as precedent.

ISSUES

1. How should a consent to extend the assessment limitations period for [REDACTED] Inc. for the year [REDACTED] describe the taxpayer?

2. How should a consent to extend the assessment limitations period for [REDACTED] for the year [REDACTED] describe the taxpayer?

CONCLUSIONS

1. The Form 872 consent to extend the assessment limitations period for [REDACTED], Inc. for the year [REDACTED] should describe the taxpayer as "[REDACTED], Inc. (EIN: [REDACTED])".

2. The Form 872 consent to extend the assessment limitations period for [REDACTED] for the year [REDACTED] should describe the taxpayer as "[REDACTED] (EIN: [REDACTED])".

FACTS

For taxable year [REDACTED], [REDACTED] Inc. and Subsidiaries, EIN [REDACTED], filed a consolidated return as the common parent of an affiliated group of corporations. [REDACTED]

[REDACTED], L.P. owned [REDACTED] % of the stock of the corporation. The subsidiaries included in the consolidated group were [REDACTED] Inc., [REDACTED] Inc., [REDACTED] [REDACTED], and [REDACTED].

In [REDACTED], Inc. changed its name to [REDACTED], Inc. We do not have information as to the ownership of [REDACTED] Inc. and how it may relate to [REDACTED] L.P. Nor do we know the nature of the business operations performed by [REDACTED], Inc.

[REDACTED] Inc. formed the subsidiary [REDACTED] for the purpose of merging with and into [REDACTED] Inc. On [REDACTED], [REDACTED] Inc. merged with [REDACTED]. After the merger, [REDACTED] Inc. survived, and it was a subsidiary of [REDACTED] Inc.

On [REDACTED], the subsidiaries [REDACTED] and [REDACTED] merged. [REDACTED] survived.

For taxable year [REDACTED], [REDACTED] Inc. was the common parent of an affiliated group that filed a consolidated federal income tax return. The return identified the taxpayer as [REDACTED] Inc. & Subsidiaries F.K.A. [REDACTED] Inc. The affiliated corporations included in the consolidated group were [REDACTED] Inc., [REDACTED] Inc., [REDACTED] Inc., [REDACTED] Inc., and [REDACTED].

The taxpayer states that on [REDACTED], Inc. entered into a recapitalization agreement with "the seller group" and [REDACTED] LLC. [REDACTED] is described as a transitory acquisition entity. Pursuant to the agreement, stock held by certain shareholders (holding [REDACTED] % of the outstanding common stock) was converted into the right to receive an aggregate amount of cash in the approximate amount of \$ [REDACTED]. In addition, [REDACTED] Inc. redeemed for \$ [REDACTED] all shares of issued and outstanding preferred stock. The remaining [REDACTED] % of the common stock was held by a prior owner of [REDACTED] Inc. The taxpayer states that this stock had an aggregate value of \$ [REDACTED].

[REDACTED] filed taxable year [REDACTED] and [REDACTED] Form

1120-FSC income tax returns of a foreign sales corporation. [REDACTED] is a Barbados corporation owned by [REDACTED] Inc. Later it timely filed amended redetermination returns, which resulted in tax overpayments on the consolidated returns of the parent.

The assessment limitations period for the [REDACTED] [REDACTED] return expires on [REDACTED]. Because of a large refund, the case is being closed out for joint committee review. To allow sufficient time for the joint committee process, the Service will ask the taxpayer to extend the assessment limitations period.

ANALYSIS

The assessment limitation period may be extended by agreement. I.R.C. § 6501(c)(4). Generally, the common parent acts as the sole agent for the consolidated group with respect to the tax matters of a consolidated return year. Treas. Reg. § 1.1502-77(a). This authority to act as agent for the group includes the authority to execute waivers. See Treas. Reg. § 1.1502-77(a) and (c).

We do not have details of the [REDACTED] recapitalization transaction. The transaction includes [REDACTED] LLC., though we do not know how the transaction involved this entity. In exchange for their shares of [REDACTED], Inc. common stock, the majority shareholders received a right to cash in the approximate amount of \$[REDACTED]. We are not certain as to who is responsible for making this substantial payment. If [REDACTED], Inc. makes the payments, we assume for purposes of this opinion i) that [REDACTED] has not liquidated substantial assets to make the payments and ii) that [REDACTED] has continued its pre-agreement business operations¹.

¹ Please determine whether the [REDACTED] recapitalization involved or led to the liquidation of [REDACTED] assets. If the majority of assets were liquidated to pay the majority shareholders for their common stock (and to pay the preferred shareholders), it may be necessary to obtain a transferee agreement. If such a liquidation occurred, please provide us with the details so that we may reconsider this opinion for appropriate revisions or additions.

For taxable year [REDACTED] Inc., as the common parent of an affiliated group that included [REDACTED] Inc., filed a consolidated return. The agreement to extend the limitations period should describe the taxpayer as [REDACTED] Inc. (EIN: [REDACTED]) and Subsidiaries consolidated group. The merger of [REDACTED], Inc. subsidiaries does not require any special language in the consent.

Where a common parent on a consolidated return remains in existence, even if it is no longer the common parent, it remains the agent for the group for years in which it was the common parent. Treas. Reg. 1.1502-77(a) and 1.1502-77T. [REDACTED] Inc., acquired by [REDACTED] Inc. in [REDACTED], continues to exist. For taxable years prior to the one ending [REDACTED], [REDACTED] Inc. is properly treated as the agent for the [REDACTED] Inc. consolidated group. For such periods any agreement to extend the assessment limitations period should describe the taxpayer as [REDACTED] Inc. (EIN: [REDACTED]) and Subsidiaries.

Determining the proper party and agreement language for a [REDACTED] consent depends upon whether the corporation has dissolved and whether it has conveyed assets to [REDACTED] Inc. (or some other party). If the corporation has dissolved, it would be necessary to determine whether someone may act on behalf of the corporation during the post-dissolution period for winding up corporate affairs.

International Examiner Mike Criss advised us that [REDACTED] still exists, though it does not report income². An officer or other authorized person may execute an agreement on behalf of the corporation. As a corporation still in existence, [REDACTED] may execute an agreement to extend the assessment limitations period where the taxpayer is described as [REDACTED] (EIN: [REDACTED]).

We are requesting the national office's 10 day post review of this opinion. The national office may supplement, revise, or

² We recommend that you determine whether [REDACTED] transferred or otherwise conveyed any assets in redemption of stock or for less than adequate consideration. If it did, please advise us of the details, as the circumstances may create a transferee liability situation.

change the advice contained herein. Please do not act on this advice until the national office completes its 10 day review.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse affect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

If you have any questions on this matter, please call Michael Calabrese of this office at (414) 297-4241.

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By: _____
MICHAEL J. CALABRESE
Attorney

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